



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2018-1018]

RIN 1625-AA00

Safety Zones; Humboldt Bay Bar and Entrance Channel, Eureka, CA, Noyo River

Entrance Channel, Ft. Bragg, CA, and Crescent City Harbor Entrance Channel, Crescent City, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones in the navigable waters of the Humboldt Bay Bar and Entrance Channel, of Eureka, CA, Noyo River Entrance Channel, of Fort Bragg, CA, and Crescent City Harbor Entrance Channel, of Crescent City, CA to safeguard navigation safety during extreme environmental conditions. These safety zones are established to protect the safety of vessels transiting the areas from the dangers associated with extreme breaking surf and high wind conditions occurring in the Humboldt Bay Bar and Entrance Channel, Noyo River Entrance Channel, and Crescent City Harbor Entrance Channel.

Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zones without permission of the Captain of the Port (COTP) or their designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION]

IN THE FEDERAL REGISTER] until March 31, 2019. For the purposes of enforcement, actual notice will be used from November 27, 2018 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2018-1018.

To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the “SEARCH” box and click

“SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Emily Rowan, U.S. Coast Guard Sector San Francisco; telephone (415) 399-7443 or e-mail at SFWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

APA	Administrative Procedure Act
COTP	U.S. Coast Guard Captain on the Port
DHS	Department of Homeland Security
FR	Federal Register
NOAA	National Oceanic and Atmospheric Administration
NPRM	Notice of Proposed Rulemaking
PATCOM	U.S. Coast Guard Patrol Commander
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” In this case, the delay associated with rulemaking procedures is impracticable. The Coast Guard was informed on November 16,

2018 of forecasted extreme environmental conditions occurring near three respective locations of California likely to exceed the maximum environmental limits of the 47-foot Motor Lifeboat employed as the primary rescue asset in each area. These three locations include: the Humboldt Bay Bar and Entrance Channel, near Eureka, CA, the Noyo River Entrance Channel, near Fort Bragg, CA, and the Crescent City Harbor Entrance Channel, of Crescent City, CA. The National Oceanic and Atmospheric Administration's National Weather Service forecasts up to 25-foot breaking seas in the area through 29 November, 2018 and expects a higher probability of breaking seas of 20 feet or more through December 2018 and January 2019. The hazardous conditions associated with these extreme environmental conditions will occur before the rulemaking process could be completed.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. The Coast Guard was informed of forecasted extreme environmental conditions including 20 foot breaking seas occurring near three respective locations of California on November 16, 2018. These three locations include: the Humboldt Bay Entrance Channel, near Eureka, CA, the Noyo River Entrance Channel, near Fort Bragg, CA, and the Crescent City Harbor Entrance Channel, of Crescent City, CA. The hazardous conditions associated with these extreme environmental conditions will occur before the rulemaking process would be completed. Additionally, the observed on scene conditions are equal to, and likely to exceed, the maximum environmental limits of the 47 foot Motor Lifeboat employed as the primary rescue asset in the area. Because of the dangers posed by these extreme environmental conditions and the resulting limited availability of rescue assets, these safety zones are necessary to provide for the safety of mariners transiting the area. For the safety concerns noted, it is in the public interest to have these

regulations in effect immediately.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. Notable hazards associated with the extreme environmental conditions have been observed in the Humboldt Bay Bar and Entrance Channel near Eureka, CA, the Noyo River Entrance Channel, near Fort Bragg, CA, and the Crescent City Harbor Entrance Channel, of Crescent City, CA. These safety zones establish temporary restricted areas on the navigable waters of the Humboldt Bay Bar and Entrance Channel near Eureka, CA, the Noyo River Entrance Channel, near Fort Bragg, CA, and the Crescent City Harbor Entrance Channel, of Crescent City, CA. These restricted areas are necessary to mitigate the risks associated with vessels transiting the area while extreme environmental conditions exist on scene.

IV. Discussion of the Rule

The Coast Guard will enforce, independent of each other, three respective safety zones in the navigable waters of the Humboldt Bay Bar and Entrance Channel near Eureka, CA, the Noyo River Entrance Channel, near Fort Bragg, CA, and the Crescent City Harbor Entrance Channel, of Crescent City, CA, when the COTP determines that the on scene conditions are hazardous and unsafe for vessel transits, typically expected to be 20 foot breaking seas at each location. Enforcement will be announced via Broadcast Notice to Mariners. These safety zones are effective from November 27, 2018, through March 31, 2019.

The effect of the temporary safety zones is to restrict navigation in the vicinity of the Humboldt Bay Bar and Entrance Channel, Noyo River Entrance Channel, and Crescent City Harbor Entrance Channel while the hazardous conditions associated with extreme environmental conditions exist, and until the Coast Guard deems the safety zone is no longer needed. Except

for persons or vessels authorized by the COTP, no person or vessel may enter or remain in the restricted areas during times of enforcement. These regulated areas are needed to keep vessels away from the immediate vicinity of the hazardous conditions associated to ensure the safety of transiting vessels in each respective area.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zone. Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing, if these facilities or vessels are in the vicinity of the safety zone at times when this zone is being enforced. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) this rule will encompass only a small portion of the waterway for a limited period of time while hazardous conditions exist, and (ii) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and

Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of limited size and duration. It is categorically excluded from further review under Categorical Exclusion L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1

2. Add § 165.959 in numerical order under the undesignated center heading “Ninth Coast Guard District” to read as follows:

§ 165-959 Safety zones; Humboldt Bay Bar and Entrance, Noyo River Entrance, and Crescent City Harbor Entrance Channel Closures, Humboldt Bay, Eureka, CA.

(a) Location. The safety zones are established in:

- (1) The navigable waters of the Humboldt Bay Bar Channel and the Humboldt Bay Entrance Channel, of Humboldt Bay, CA;
- (2) The navigable waters of the Noyo River Entrance Channel as defined by the Area contained seaward of the Line of Demarcation with northern boundary of the line originating in approximate position 39°25'41"N, 123°48'37"W and extending 1200 yards at bearing 290° T & southern boundary of the line originating in approximate position 39°25'38"N, 123°48'36"W & extending 1200 yards at 281° T, in Fort Bragg, CA; and
- (3) The navigable waters of the Crescent City Harbor Entrance Channel, as defined by the area contained seaward of the line originating in approximate position 41°44'36"N, 124°11'18"W bearing 237°T and extending out to 1 NM of the Line of Demarcation in Crescent City, CA.

(b) Enforcement period. The zones described in paragraph (a) of this section will be effective from November 27, 2018 through March 31, 2019. The zones described in paragraph (a) will be enforced when the COTP determines that the on scene conditions are hazardous and unsafe for vessel transits, typically expected to be 20 foot breaking seas at each location. Enforcement will be announced via Broadcast Notice to Mariners. The COTP will notify the maritime community of periods during which these zones will respectively be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) Definitions. As used in this section, “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or at a Coast Guard unit or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zones.

(d) Regulations. (1) Under the general regulations in 33 CFR part 165, subpart C, entry into, transiting or anchoring within these safety zones are prohibited unless authorized by the COTP or a designated representative.

(2) The safety zones are closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the Humboldt Bay Entrance Channel or Crescent City Harbor Entrance Channel safety zones during times of enforcement shall contact Station Humboldt Bay on VHF-FM channel 16 or at (707) 443-2213 between 6:30 a.m. and 10 p.m., or to Sector Humboldt Bay on VHF-FM channel 16 or at (707) 839-6113 if between 10 p.m. and 6:30 a.m. Vessel operators desiring to enter or operate within the Noyo River Entrance Channel safety zone during times of enforcement shall contact Station Noyo River on VHF-FM channel 16 or at (707) 964-6611 between 6:30 a.m. and 10 p.m., or to Sector Humboldt Bay on

VHF-FM channel 16 or at (707) 839-6113 if between 10 p.m. and 6:30 a.m. Vessel operators given permission to enter or operate in the safety zones must comply with all directions given to them by the COTP or a designated representative.

Dated: November 27, 2018

Marie B. Byrd
Captain, U.S. Coast Guard
Alternate Captain of the Port, San Francisco
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